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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: NOV 30 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h) and 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of the Philippines who entered the United States at an unknown place and time with unknown status. The applicant claims he entered the United States at New York City on May 23, 1987 with a visa; however, there is no documentation of this claim. The record reflects that in 1991, the applicant conspired with three other individuals to obtain, through bribery, fraudulent immigration documents. The applicant pled guilty and was convicted in 1994 of conspiracy to bribe a public official. The applicant was found to be inadmissible to the United States pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He was also found inadmissible pursuant to § 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure a benefit under the Act by fraud. The record indicates that the applicant is married to a U.S. citizen and that he is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife and children in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and children. The application was denied accordingly.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) applied incorrect case law to the instant application, and also failed to properly weigh the equities involved. In addition, counsel maintains that the director incorrectly found the applicant inadmissible pursuant to § 212(a)(9)(B) of the Act, for having been illegally present in the United States. It must be pointed out, however, that the director's decision did not find the applicant inadmissible pursuant to § 212(a)(9)(B) of the Act; it merely mentioned that the applicant appears to have been unlawfully present in the United States.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides, in pertinent part, that:

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The only difference between the application of the above two waivers for the purposes of these proceedings is that under § 212(h)(1)(B), hardship may be shown to the applicant's U.S. citizen or lawful permanent resident (LPR) spouse, parent, son, or daughter, while under, § 212(i)(1), only hardship to the applicant's spouse or parent is relevant. Both §§ 212(h)(1)(B) and 212(i)(1) of the Act provide that waivers of the respective bars to admission are dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a section 212(i) waiver application in the exercise of discretion.

The director determined that the applicant had failed to establish that his inadmissibility would cause extreme hardship to his qualifying family members. Thus, it was not necessary to consider whether the applicant was eligible for a waiver as a matter of discretion. In his decision, the director cited cases from various Circuit Courts of Appeals as well as the U.S. Supreme Court in order to provide examples of factors to be considered in the determination of the existence of extreme hardship. Counsel, in contrast, cites Board of Immigration

Appeals (BIA) cases dealing with the discretionary weighing process, which, again, does not apply until extreme hardship is found.

On March 16, 1994, the applicant was convicted of conspiracy to bribe a public official, in violation of Title 18 U.S.C. § 201(b)(1)(B) for a crime he committed in 1991. His petition for alien relative was also filed in 1991; therefore, the applicant is statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. The question remains whether the applicant qualifies for a waiver under § 212(h)(1)(B) or § 212(i)(1) of the Act.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel asserts that, should the applicant's family follow him to the Philippines, the children would suffer extreme hardship, as they would have great difficulty adjusting to new schools, new friends, and a new culture. The applicant's three children have been raised within the American cultural context and are flourishing in their respective schools. The applicant's eldest child is 15 years old, an age at which he would experience possibly greater challenges than his younger siblings upon being uprooted and transported to a very different society. The AAO finds the situation of the applicant's eldest child to be similar to that of the respondents' eldest child in *In Re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45 (BIA 2001). In the latter case, which dealt with suspension of deportation, the eldest child was 15 years old and had been raised all her life in the United States. The BIA found that to require her to follow her parents, the respondents, to Taiwan would cause her extreme hardship, due to the many difficulties in language, culture, and education that she would face. The AAO agrees that the applicant's eldest son might face difficulties amounting to extreme hardship if he accompanies his father to Taiwan.

The applicant has not, however, established that his family would face extreme hardship if they remain in the United States. The applicant's wife states that her family will suffer emotionally and financially if the applicant is removed. The AAO notes that she is gainfully employed, and the record does not demonstrate that she would be unable to make necessary budget adjustments or that the applicant would be unable to contribute to the family's finances from the Philippines. The applicant's wife also states that it would be difficult for her to continue caring for her ailing mother if the applicant is removed. The record does not indicate that the applicant's wife would be unable to continue assisting her mother in the applicant's absence. The applicant's children state that they would be full of sorrow and would miss their father greatly, but such emotions are, unfortunately, typical and do not reflect extreme hardship.

The record contains a psychosocial evaluation for the applicant and his family, which [redacted] prepared based on one interview conducted on July 11, 2003. The report does not indicate that the applicant's wife or children are under any type of psychological or psychiatric care on account of the prospect of the applicant's removal, nor does it recommend that they pursue any type of therapy to deal with the psychosocial effects of his departure. The evaluation essentially reiterates statements made by the applicant's family members to the effect that they will be deeply upset and saddened by their father's removal.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse and children would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under §§ 212(h) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.